

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8180 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.JAIN

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

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PRATAPBHAI C SOLANKI

Versus

COMPETENT AUTHORITY & ADDL. COLLECTOR ULC

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Appearance:

MR MI HAVA for Petitioners

MR TH SOMPURA, ASSTT. GOVERNMENT PLEADER for the Respondents.

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CORAM : MR.JUSTICE R.R.JAIN

Date of decision: 19/03/97

ORAL JUDGEMENT

The petitioners are the owner of land bearing

survey No.238 admeasuring 6648 square metres situated in village Akota district Baroda. The petitioners filed Form No.5 on 31.3.1979 under Section 21 of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) read with Rule 11 of the Urban Land (Ceiling and Regulation) Rules, 1976 making declaration of intention to develop the same. Form No.5 came to be processed by the Competent Authority. However, for want of required details, a show cause notice was issued to the petitioners to submit further details within the stipulated period failing which the Form would be rejected. The show cause notice was replied to by the petitioners on 10.5.1990 at Annexure-B stating that the land covered by original plot No.238 is covered under the proposed Town Planning Scheme No.14 City of Baroda. Consequently, till finalisation thereof, the petitioners would not know about the total area, boundaries and dimensions of the reconstituted plot to be allotted and, in absence thereof, would be difficult for the petitioners to supply the required particulars. The petitioners also requested the Competent Authority to defer decision till finalisation of the proposed Scheme. Despite this reply, the Competent Authority proceeded to process Form No.5 and rejected the same. While rejecting this form, the Competent Authority is influenced by the fact that the Government Resolution dated 29.4.1980 requires a holder to supply details on or before 30.6.1980 whereas, in this case, as details have not been supplied within the stipulated period, the form needs no consideration. The order reflects that the Competent Authority is also influenced by the fact that the Government has already initiated proceeded under Sections 10 (3) and 10 (5) of the Act. Consequently, the declaration made in Form No.5 cannot be accepted. Aggrieved by the order of the Competent Authority at Annexure-C dated 9.8.1991, the petitioners filed an appeal before the Appellate Authority and Urban Land Tribunal. The Tribunal vide order dated 30.4.1994 at Annexure-D confirmed the order of the Competent Authority. It is in this background that the petitioners have preferred this petition.

2. It is true that, as required under law, whenever a declaration of intention to develop is made or form is filled in, the party concerned should provide complete details so as to enable the Competent Authority to decide the same in accordance with law. In this case, admittedly, the declaration made by the petitioner in Form No.5 under Section 21 of the Act was incomplete therefore the Competent Authority had issued notice requiring the petitioners to supply further details to

enable the authority to decide in accordance with law. It is also true that the petitioners did not supply details as required by the Competent Authority but did explain circumstances beyond their control and rendering handicapped to supply the particulars. Hence, the Competent Authority ought to have considered the reply and the circumstances explained. In this case, as the Town Planning Scheme No.14 City of Baroda is proposed and the land in question is covered under that proposed Scheme, the petitioners would not know about the allotment of reconstituted Final plot, its dimensions and measurements till the same is prepared and approved by the Government. Till the Final plot is allotted, the petitioners are not expected to give further better particulars as would be beyond their control and depending upon a future events. It cannot be gainsaid that the development would also depend upon the total area and the boundaries of the property in question. Now, since the plot in question which is included in the proposed Town Planning Scheme would also be subject to variation, additions and alterations in dimension and total area. Unless the Scheme is finalised, the question of allotment of reconstituted plot does not arise and, till the reconstituted plot is not allotted, the holder cannot know about the total area and boundaries of the plot which is to be developed in accordance with the proposed Scheme declared by filling of Form No.5. Mr.Hava for the petitioner states that the Town Planning Scheme No.14 has been finalised somewhere in August 1993. Thus, on admitted facts, before August 1993, it was beyond the control of the petitioner to supply the required particulars.

3. It would be pertinent to note here that original plot bearing survey No.238 is admeasuring 6648 square metres, whereas on reconstitution the petitioner has been allotted final plot No.180 admeasuring 5075 square metres. Thus, by virtue of the Town Planning Scheme, the petitioner becomes owner of the land bearing final plot No.180 admeasuring 5075 square metres. Thus, the petitioner could not have submitted the required particulars qua the reconstituted plot before it is allotted. Had the particulars been supplied, keeping in mind the measurement of original plot No.238 which is 6648 square metres would have been of no use as could not have been developed accordingly. Under these circumstances, the impugned order passed by the Competent Authority on 9.8.1991 is arbitrary, illegal and cannot be sustained at law and requires to be quashed and set aside.

4. Mr.Sompura for the respondents has argued that, as the Government has already initiated proceedings under Sections 10 (3) and 10 (5) of the Act, the learned Competent Authority was justified in rejecting the form. This submission has no force in law as the powers of the Government to initiate proceedings under Section 10 of the Act during pendency of application under Sections 20 and 21 of the Act have already been crystalised by this court in judgment reported in 1994 (1) Gujarat Law Reporter at page 203 in the case of SAMRATHBEN MANILAL CHOKSHI v. STATE OF GUJARAT. As held by this court, the State is under a duty to stay proceedings beyond the stage of Section 10 (2) of the Act till application for exemption filed unnder Section 20 or 21 is decided. In this case, keeping in mind the inability arising on account of an act of statutory authority, the respondents ought to have refrained from proceeding further beyond the stage prescribed under Sec.10 (2) of the Act. Therefore, in my view, the Competent Authority was not justified in rejecting Form No.5 on the ground that the Government has already initiated proceedings under Sections 10 (3) and 10 (5) of the Act.

5. For the reasons stated above, the impugned orders at Annexure-C dated 9.8.1991 and at Annexure-D dated 30.4.1994 are hereby quashed and set aside. The matter is remanded to the Competent Authority with direction to decide Form No.5 in accordance with law within four months from the date of receipt of writ from this court. The petitioner shall supply the relevant details within one month from today to the Competent Authority. Rule is accordingly made absolute with no order as to costs.

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